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Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HAO XU,)	
)	No. C 07-3383 PVT
Plaintiff,)	
)	
v.)	ANSWER
)	
ALBERTO GONZALES, United States Attorney)	
General, U.S. Department of Justice;)	
MICHAEL CHERTOFF, Secretary of the)	
Department of Homeland Security;)	
EMILIO T. GONZALEZ, Director of United)	
States Citizenship and Immigration Services,)	
)	
Defendants.)	
_____)	

Defendants hereby submit their answer to Plaintiff's Complaint for Writ in the Nature of Mandamus and Declaratory Judgment Under 28 U.S.C. § 1361.

1. Defendants admit the allegations in Paragraph One; however, Defendants deny that they have improperly withheld action on Plaintiff's application to his detriment.

PARTIES

2. Defendants admit the allegations in Paragraph Two.

3. Defendants admit the allegations in Paragraph Three.

4. Defendants admit the allegations in Paragraph Four.

5. Defendants admit the allegations in Paragraph Five.

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JURISDICTION

6. Paragraph Six consists of Plaintiff's allegations regarding jurisdiction, to which no responsive pleading is required; however, to the extent a responsive pleading is deemed necessary, Defendants deny the allegations in this paragraph.

VENUE

7. Defendants admit the allegations in Paragraph Seven.

INTRADISTRICT ASSIGNMENT

8. Defendants admit the allegations in Paragraph Eight.

EXHAUSTION OF REMEDIES

9. Defendants deny the allegations in Paragraph Nine.

CAUSE OF ACTION

10. Defendants admit the allegations in Paragraph Ten.

11. Defendants are without sufficient information to admit or deny the allegations Paragraph Eleven.

12. Defendants are without sufficient information to admit or deny the allegations in Paragraph Twelve.

13. Defendants admit the allegations in Paragraph Thirteen.

14. Defendants admit the first sentence in Paragraph Fourteen; however, defendants deny the remaining allegations in this paragraph.

15. Defendants deny the allegations in Paragraph Fifteen.

16. Defendants deny the allegations in Paragraph Sixteen.

17. Defendants deny the allegations in Paragraph Seventeen.

18. Defendants deny the allegations in the first sentence of Paragraph Eighteen.

18(a). Defendants admit the allegations in Paragraph Eighteen subsection a.

18(b). Defendants admit the allegations in Paragraph Eighteen subsection b.

19. Defendants deny the allegations in Paragraph Nineteen.

20. Defendants deny the allegations in Paragraph Twenty.

21. Defendants deny the allegations in Paragraph Twenty-One.

1 **PRAYER**

2 22. Paragraph Twenty-Two consists of Plaintiff's prayer for relief, to which no admission or
3 denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny
4 this paragraph.

5 **FIRST AFFIRMATIVE DEFENSE**

6 The court lacks jurisdiction over the subject matter of this action.

7 **SECOND AFFIRMATIVE DEFENSE**

8 The Complaint fails to state a claim against the Defendants upon which relief can be granted.

9 **THIRD AFFIRMATIVE DEFENSE**

10 No acts or omissions by the United States or its employees were the proximate cause of any
11 injury or damages to the Plaintiff.

12 **FOURTH AFFIRMATIVE DEFENSE**

13 At all times alleged in the complaint, Defendants were acting with good faith, with
14 justification, and pursuant to authority.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 Defendants are processing the applications referred to in the Complaint to the extent possible
17 at this time. Accordingly, no relief as prayed for is warranted.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 Defendants' delay is not unreasonable as a matter of law.

20 WHEREFORE, Defendants pray for relief as follows:

21 That judgment be entered for Defendants and against Plaintiff, dismissing Plaintiff's complaint
22 with prejudice; that Plaintiff takes nothing; and that the Court grant such further relief as it deems
23 just and proper under the circumstances.

24 Dated: August 28, 2007

Respectfully submitted,

25 SCOTT N. SCHOOLS
26 United States Attorney

27 /s/
28 ILA C. DEISS
Assistant United States Attorney
Attorneys for Defendants